

G-012/AA-93-218 ORDER SUSPENDING WESTERN'S AUTHORITY TO MAKE
PURCHASED GAS ADJUSTMENTS TO ITS RATES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Western Gas Utilities, Inc.
Converting its Demand Entitlements on
Northern Natural to New Services

ISSUE DATE: June 24, 1994

DOCKET NO. G-012/AA-93-218

ORDER SUSPENDING WESTERN'S
AUTHORITY TO MAKE PURCHASED GAS
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PROCEDURAL HISTORY

I. Proceedings to Date

On November 23, 1992 Western Gas Utilities, Inc. (Western or the Company) filed a request for approval of a change in pipeline demand entitlements. The Company's pipeline supplier, Northern Natural Gas Company (Northern), had unbundled sales and transportation services under its New Services Settlement with the Federal Energy Regulatory Commission, making existing services obsolete. The Company proposed to convert the services it was receiving under Northern's existing tariffs (Contract Demand, Firm Transportation, Seasonal Service, and Winter Peaking Service) to new services under the new tariffs (Transportation Firm-12 Base, Transportation Firm-12 Variable, Transportation Firm-5, Sales Firm-12, and Sales Firm-5).

The Company also requested approval of a 223 Mcf/day increase in total firm entitlements to meet the needs of new customers. Finally, the Company sought to recover in its annual Purchased Gas Adjustment true-up a four-month \$.0018/Mcf undercharge discovered by the Department in the course of its review of the Company's filing.

On December 20, 1993, the Commission issued its ORDER APPROVING ENTITLEMENT CHANGES, APPROVING UNDERCHARGE RECOVERY, AND REQUIRING FURTHER FILINGS in this matter. In the Order, the Commission required Western to bring its Purchased Gas Adjustment (PGA) and its PGA reporting performance into conformity with Commission rules, maintain at least two sources of natural gas supply, and report its progress on the gas source requirement within 60 days. The Commission also directed the Minnesota Department of Public Service (the Department) to file an informal status report on Western's progress with these requirements.

On February 8, 1994, the Department submitted its informal status report.

On March 8, 1994, the Commission issued a Request for Comments on why Western had not responded to the December 20, 1993 Order.

On March 18, 1994, the Department submitted comments. The Department recommended, among other things, that the Commission refer Western's noncompliance with the December 20, 1993 Order to the Attorney General for pursuit of penalties.

On March 18, 1994, Western filed responses to the December 20, 1993 Order. The Company acknowledged that the responses had been due February 20, 1994.

On April 6, 1994, Western filed a response to the Commission's March 8, 1994 Request for Comments. Among other things, the Company requested that the Commission and the Department work with it to help it meet the PGA reporting requirements.

On May 11, 1994, the Department filed an Addendum to its March 18, 1994 comments. The Department expressed continuing concern about the Company's level of diligence in correctly identifying and incorporating the Commission-approved demand entitlement level in its monthly PGA reconciliation process.

On May 19, 1994, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. PGA Issue

A. Background

The Minnesota legislature has charged the Public Utilities Commission with the responsibility to assure that rates are just and reasonable. Minn. Stat. § 216B.03 (1992). In addition, the legislature has established the general rule that rates must be set and changed only as part of a general rate case proceeding under Minn. Stat. § 216B.16 (1992). The legislature has directed the Commission to resolve all questions regarding the reasonableness of rates and provided the further assistance of contested case proceedings. Finally, Minn. Stat. § 216B.03 (1992) requires the Commission to resolve any doubt as to reasonableness in favor of the consumer.

There are only two exceptions to the general rule that rates can be changed only after the scrutiny of a general rate case proceeding. The exception relevant in this case is provided in Minn. Stat. § 216B.16, subd. 7. This provision authorizes but does not require the Commission to permit a utility to make monthly energy cost rate adjustments. The Commission's discretion to authorize a monthly energy cost rate adjustment (known as the Purchased Gas Adjustment or PGA) is always circumscribed by its on-going duties 1) to assure that rates are just and reasonable and 2) to resolve any doubt as to reasonableness in favor of the consumer. Minn. Stat. § 216B.03 (1992).

The Commission has adopted certain reporting requirements for gas utilities who wish to change their rates outside a rate case pursuant to the PGA exception. Gas utilities operating a PGA must file

- monthly reports (Minn. Rules, Part 7825.2910, subp. 1);

- annual reports (by September 1) regarding their fuel procurement policies and actions taken to minimize cost including conservation actions (Minn. Rules, Part 7825.2800);
- annual reports (by September 1) listing by month automatic adjustment charges for each customer class for the previous year commencing July 1 and ending June 30 (Minn. Rules, Part 7825.2810);
- an annual auditor's report by September 1 each year (Minn. Rules, Part 7825.2820); and
- a true-up filing (Minn. Rules, Part 7825.2910, subp. 4) computed under Minn. Rules, Part 7825.2700, subp. 7 for the previous year commencing July 1 and ending June 30.

In addition, such utilities must file for a change in demand to increase or decrease demand, to redistribute demand percentages among classes, or to exchange one form of demand for another. (Minn. Rules, Part 7825.2910, subp. 2).

The Commission depends on these timely and accurate filings to provide on-going assurance that the changes in customers' rates are fair and reasonable and reserves the right to discontinue or modify an automatic adjustment provision for an individual utility.

B. Western's Pattern of Non-Compliance With PGA Requirements

Western's non-compliance with PGA requirements has been on-going for several years, requiring an inordinate amount of attention from the Department and the Commission. The Commission's patience with the Company's performance reached a new level following the Commission's review of the Company's request for approval of a change in pipeline demand entitlements.

At the November 24, 1993 hearing on this matter, the Commission learned that the Company had failed to make required filings under the Purchased Gas Adjustment Rules¹ explaining supply source changes as they occurred. This failure to comply with the rules, together with inaccuracies in the Company's Purchased Gas Adjustment (PGA) reports discovered by the Department, renewed the Commission's concern about the Company's regulatory compliance practices.

In comments at the November 24 hearing, Western acknowledged a history of difficulty in complying with regulatory reporting requirements, especially monthly PGA reporting requirements. The Department reported Company performance was improving, but was still below the norm.

In its December 20, 1993 Order, the Commission notified Western that it would no longer tolerate the Company's lax compliance with regulatory requirements. The Commission emphasized that while both Department and Commission staff stood ready to help utilities and intervenors with regulatory complexities, neither agency had the personnel necessary to redo routine filings. The Commission reminded Western that it is the Company's responsibility to develop the expertise necessary to comply promptly and completely with regulatory requirements, including monthly PGA reporting requirements. The Commission warned that continuing non-compliance could result in Western losing its PGA.

Subsequent events and information coming to the Commission's attention have done nothing to reduce the Commission's concern:

¹ Minn. Rules, parts 7825.2900-2920.

- In its February 18, 1994 informal report required by the December 20, 1993 Order, the Department summarized the Company's PGA errors from July 1992 through January 1994. The Department reported that despite the Department's on-going assistance, Western continued to make errors in calculating its PGA.
- Despite the Commission's expression of concern in its December 20, 1993 Order and clear directive that Western file a report related to various aspects of its PGA operation within 60 days of the Order, the Company failed to file the required report in a timely manner and did so only after being prompted by the Commission's March 8, 1994 Request for Comments.
- When the Company did file its report, late, on March 18, 1994, the Company's response was not reassuring. Although the Company stated that it believed that the errors identified by the Department had been corrected, the Department reported that the Company remained confused in its efforts to comply with the PGA rules. The Department expressed concern about the Company's level of diligence in correctly identifying and incorporating the Commission-approved demand entitlement level in its monthly PGA and annual reconciliation process.
- Furthermore, in its March 18, 1994 comments, the Department reported new violations: that the Company's two currently-filed miscellaneous PGA-related petitions indicated inadequate supporting documentation to allow a complete analysis of the filings, failed to explain what actions it has taken to address the diversification issue, and failed to seek approval of its May 1993 contract with Rahr Malting in violation of Minn. Stat. § 216B.05 (1992).²

² In a recent Order, the Commission has found that the Company failed to seek and obtain approval for *two* contracts with Rahr Malting (a May 1993 contract and one commenced in November 1993) in violation of Minn. Stat. § 216B.05 (1992). See In the Matter of a Petition of Western Gas Utilities, Inc. for Approval of a Gas Sales Contract with Rahr Malting, Docket No. G-012/M-93-1252, ORDER FINDING CONTRACTS INVALID AND REQUIRING REFUND (June 6, 1994).

- In April 1994, its annual review of the automatic adjustment of charges by all gas and electric utilities, the Commission found that Western's PGA performance merited particular concern. The Commission noted several deficiencies in Western's filings and expressed concerns for the accuracy of the Company's PGA rates. For example, the Commission found numerous errors and miscalculations in Western's 1991-92 and 1992-93 true-up calculations. In addition, the Commission noted that Western was unable to confirm the exact level of entitlement on which it based its Transition Cost Recovery (TCR) surcharges. Finally, the Department provided a two page summary of the Company's PGA reporting errors for the 1992-93 that resulted in erroneous rates being charged to customers.³
- Finally, the Department reported in its May 11, 1994 comments that Western's annual reconciliation (true-up) process inappropriately incorporated a TF-5 level which had not been approved by the Commission.

C. The Department's Recommendation

In its March 18, 1994 comments, the Department noted Western's on-going difficulties in complying with the Purchased Gas Adjustment regulations. The Department did not dispute that discontinuance of the PGA was warranted. The only reason the Department stated for not recommending that the Commission discontinue the Company's PGA was concern that if the Commission discontinued the Company's PGA *and* the price of gas decreased below the base cost of gas, ratepayers would pay more than they would have paid if the PGA had remained in effect.

Instead of advocating discontinuance of the PGA, the Department urged the Commission to address Western's noncompliance with Commission Rules and Orders by referring the matter to the Attorney General for appropriate legal action, including the pursuit of penalties against the Company.

D. Commission Action

The Commission recognizes the assistance the Department has given Western in meeting its PGA reporting obligations and the oversight the Department has exercised to protect ratepayers, the public, and the Company. The Commission appreciates the Department's offer to continue meeting with Western's regulatory compliance staff to answer questions about the PGA process. However, as stated in the December 20, 1993 Order, there is a limit to the regulatory resources that can be reasonably directed to this effort. That limit has been passed.

Moreover, the Commission finds on the basis of this record that its fundamental concern to assure just and reasonable rates cannot be met under the Company's current administration of the PGA.

³ In the Matter of the Review of 1992 Automatic Adjustment of Charges for All Gas and Electric Utilities, Docket No. G,E-999/AA-92-1062 and In the Matter of the Review of 1993 Automatic Adjustment of Charges for All Gas and Electric Utilities, Docket No. G,E-999/AA-93-682, ORDER ACCEPTING ANNUAL AUTOMATIC ADJUSTMENT REPORTS (April 7, 1994).

Accordingly, the Commission will suspend the Company's PGA, effective July 1, 1994, for the period specified in Ordering Paragraph 1. Within 10 days of this Order, Western will be required to file a proposed rate at which its cost of gas will be suspended.

To meet the contingency identified by the Department (negative impact on ratepayers if the price of gas falls below the base price of gas) the Commission will approve a non-PGA cost of gas for Western only after close scrutiny of the Company's compliance filing and the Department's comments on the Company's proposal. In addition, during its review of the Company's proposed cost of gas rate, the Commission will consider what additional safeguards (e.g. reporting requirements) it will impose. Some regular reporting of actual cost of gas figures would appear warranted. This information would enable the Commission to quickly identify any cost of gas problem and take appropriate corrective action to protect the ratepayers' interests, including, for example, lowering rates to reflect changed gas market conditions.

Finally, the Commission encourages the Company to use this time to develop and demonstrate its technical competence to operate a PGA in compliance with the Commission's rules. At this point, the Company should deploy such personnel and make such practice reports etc. as it deems helpful to make its case for reinstatement of its PGA.

III. Diversification of Gas Issue

In its December 20, 1993 Order, the Commission directed Western to make a written filing by February 18, 1994 describing what it was doing to diversify its gas *supply*. On March 17 and April 5, 1994 the Company provided comments but only after the Commission issued a second request for information in a notice requesting comments.

In its April 5, 1994 comments, Western reported that it planned to take bids for its *storage* gas in May 1994 and for its *firm transportation* volumes in June 1994. However, Western does not give any indication that it will seek bids in an attempt to diversify its *supply* between at least two suppliers. In fact, indications are to the contrary: the Company states that it did not experience any supply problems during the 1993-94 heating season and noted its increased use of gas storage, implying a belief that additional steps to diversify its gas supply were neither necessary nor desirable.

However, Western's increased use of gas storage may or may not help it diversify its supply and may or may not be cost-effective. In addition, requesting bids for all and parts of its gas supply would permit an important comparison between the cost of using one supplier and two.

Therefore, the Commission will direct the Company to make a comprehensive informational filing no later than June 30, 1994 on the results of the bids it received and accepted for its gas supply requirements.⁴

ORDER

1. Effective July 1, 1994 for a period of one year or until further Order lifting the suspension, whichever is shorter, Western's PGA is temporarily suspended pursuant to Minn. Rules, Part 7825.2920, Subpart 3.
2. To permit monitoring of its actual gas costs, the Company shall file its actual cost of gas figures monthly during the period that the PGA is suspended.
3. Within 10 days of this Order, Western shall file a proposed rate for its cost of gas during the suspension period and provide the basis for its proposal. The proposed rate shall be equal to its average cost over the last 12 months. The Company shall also propose a schedule for filing practice PGA filings during the suspension period.
4. Within 10 days of the Company's filing pursuant to Ordering Paragraph 2, the Department shall verify Western's gas costs and file comments on the Company's filing. If the Department disagrees with the Company's proposed cost of gas, the Department shall present its preferred figures and provide the basis for these figures.
5. Western shall solicit bids for its gas supply from more than one gas supplier and to file a report on what it has done to accomplish this no later than June 30, 1994.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

⁴ See the requirements of Minn. Rule 7825.2800, Annual Reports, Policies and Actions, which states that:

All public utilities shall file annually on September 1 of each year the procurement policies for selecting sources of fuel and energy purchased, dispatching policies, if applicable, and a summary of actions taken to minimize cost including conservation actions for gas utilities.